of their agents, unless that claim is based on a contract with the person injured by such a tort, and that *Downes* v. *Harper Hospital,* and other similar cases are consistent with this rule. They rest upon the principle correctly stated in *Powers* v. *Mass. Homœopathic Hospital, supra,* viz.: that the beneficiary of such charitable trust enters into a contract whereby he assumes the risk of such torts. It is not surprising that years should have elapsed before the correct legal principle governing these cases was announced in *Powers* v. *Mass. Homœopathic Hospital.* The discovery of correct legal principles, like the discovery of scientific and social truths, requires time and patient investigation."

The holding of the court in this case, resulting, as it does, in the limitation of the apparent doctrine of the *Downes Case,* is undoubtedly correct. The case defines and limits, in a clear and unmistakable way, the immunity of charities for the negligent acts of agents and servants. H. B. H.

THE POWERS OF GENERAL AND SPECIAL AGENTS.—The rule that one dealing with a general agent is not bound by limitations on the authority of such agent of which he does not know, was recently applied in the case of *Western Union Telegraph Co.* v. *Heathcote* (Ala.), 43 So. Rep. 117. A telegraph message was delayed, but the sendee of the message, plaintiff in the action, did not, as the rules of the company required, make claim for damages in writing within 60 days after the message was delivered for transmission. Plaintiff claimed that the local agent in charge of the business of the company in Birmingham had been orally notified, and that he had waived written notice. Defendant denied this, and insisted that in any case such agent had no authority to waive their rule requiring written notice. For other errors the case was sent back for new trial, but on this point the court held that as the agent was the general agent of defendants, and as there was no evidence that plaintiff, or her agent, knew of any limitation imposed by defendant on his authority, it would follow that on proof of a waiver by the agent defendant would be bound by his acts in this respect.

A distinction is taken in many of the cases between a general and a special agent, and the rule is laid down that the acts of a general agent, in all matters within the proper and legitimate scope of the business, bind the principal notwithstanding any secret limitations the principal may have imposed. In the case of a special agent, however, it is said that if he exceeds the authority given, the principal will not be bound. *Towle* v. *Leavitt,* 23 N. H. 360, 55 Am. Dec. 195, and cases cited, *Maryland Casualty Co.* v. *Peoples,* 26 Pa. Super. Ct. 142; *Sullivan* v. *Jahren* (Kan.), 79 Pac. Rep. 1071; *Schenck* v. *Griffith* (Ark.), 86 S. W. 850; *Loudon Savings Fund Society* v. *Hagerstown Savings Bank,* 36 Pa. St. 371. It is the purpose of this note to inquire whether this is a well founded distinction.

The cases are not agreed as to the definitions of general and special agents. While some definitions of a general agent give him a much broader authority than do others, yet there is substantial agreement that a general agent is one having authority to transact the business generally of his principal, or more often, the business of his principal of a particular kind, or in a partic-

ular place. *British and American Mortgage Co.* v. *Cody,* 135 Ala. 622; *First National Bank* v. *Nelson,* 38 Ga. 391; *Union Stock Yards Co.* v. *Mallory,* 157 Ill. 554. The definitions of a special agent are various. In *Loudon Savings Fund Society* v. *Hagerstown Savings Bank,* 36 Pa. St. 371, he is said to be one who is employed about one specific act, or certain specific acts only. See also *Gibson* v. *Snow Hardware Co.,* 94 Ala. 346; *South Bend Tag Mfg. Co.* v. *Dakota Ins. Co.,* 3 S. D. 205. The case of *Butler* v. *Maples,* 9 Wall. (U. S.) 766, is often cited. STRONG, J., says: "The purpose of the latter," the special agency, "is a single transaction, or a transaction with designated persons. It does not leave to the agent any discretion as to the persons with whom he may contract for the principal, if he be empowered to make more than one contract. Authority to buy for a principal a single article of merchandise by one contract, or to buy several articles from a person named, is a special agency." This distinction between one having authority to do specific acts only, and one having authority to act generally seems of small importance. The authority to do one act manifestly may be as broad in the performance of that act, as authority to do two or many acts, in the performance of those acts.

A more important distinction is brought out in the definition of a special agent as one acting under limited and circumscribed powers, the limitations being either imposed by the principal or naturally inferred from the nature of the act to be done. *Gibson* v. *Snow Hardware Co.,* 94 Ala. 346; *Pacific Biscuit Co.* v. *Dugger,* 40 Ore. 362; *Davis* v. *Talbot,* 137 Ind. 235; *St. Louis Gunning Advertising Co.* v. *Wanamaker* (Mo.), 90 S. W. 737. It is easy to see how legal consequences depend on whether one acts under limited or unlimited authority, and if agents can be classified into such as act under restrictions and such as do not, then here is a sensible and important classification. But it is believed there is no such distinction that can clearly be made. Every agent is presumed by law to be limited, either by his principal's instructions or by the nature of his undertaking. Some are more limited, others less; some secretly, others openly. If the limitations are secret it needs no citation of authorities to establish that the third person who deals with the general agent is not bound by them. The same is true of the special agent. If the limitations are not secret, then in either case the third person is bound by them. *Towle* v. *Leavitt,* 23 N. H. 360, 55 Am. Dec. 195; *Hatch* v. *Taylor,* 10 N. H. 538; *Bryant* v. *Moore,* 26 Me. 84, 45 Am. Dec. 96.

A number of cases have pointed out the impossibility of precise rules based on such distinctions. *Haskell* v. *Starbird,* 152 Mass. 117, 23 Am. St. Rep. 812; *Mechanics Bank* v. *New York & N. H. R. Co.,* 13 N. Y. 599, 632; *Cross* v. *A. T. & S. F. Ry. Co.,* 141 Mo. 132, 42 S. W. 675. The difficulty is well stated in *Merchants Ins. Co.* v. *New Mexico Lumber Co.,* 10 Colo. App. 223, 51 Pac. 174. "The great trouble is, courts are totally unable to define what a special, and what a general agent is, in terms which shall make the definition applicable to each particular case, so that it by no means follows that when an agent is called a general agent he possesses certain power, and when he is called a special one, the power may not be taken to be within the limits of his authority." The conclusion seems clear that general and special

are merely relative terms incapable of precise definition except as applied to the particular facts of each case. The scope of the authority of a general agent is, in general, broader than that of a special, *Mars* v. *Mars*, 27 S. C. 132, but it is entirely proper to refer to the same agent as either general or special, according as the emphasis is on the extent or the limitations of his powers. The terms are not precise, but used in this way they are often convenient. In any case the liability of the principal can not be settled by calling the agent a general agent or a special agent. If the act done by the agent, general or special, was within the real or apparent scope of his authority the principal will be bound. If it was not, the principal is not liable, regardless of whether the agent was general or special, or whether he acted under a general or a special authority. No objection can be taken to defining, as in the present case, what are the limits of the authority of a "general agent" of a telegraph company, and then announcing that limitations beyond those to be implied from the nature of the employment are not binding on third persons unless they are informed of them. But it would be open to the objections above pointed out to say that limitations are not binding because the agency is a general one. E. C. G.

MUNICIPAL ORDINANCES LICENSING TRADES AND OCCUPATIONS.—The validity of these ordinances and of the licenses imposed under them is a matter which has come before the courts with increasing frequency within the last fifteen or twenty years. The Supreme Court of Kansas has considered the question in the recent case of *City of Lebanon* v. *Zanditon*, 89 Pac. Rep. 10 (Feb. 9, 1907). The defendant was convicted of violating an ordinance of the city of Lebanon which provided that no transient merchant should be permitted to sell or offer for sale at retail any article of merchandise usually kept for sale by any merchant or manufacturer of the city within the limits of the city, without first paying a license tax of $10 per day. The penalty was a fine of not less than $5, nor more than $25 for each offense, and each day's violation should be considered a separate offense. The defendant, carrying a stock of clothing and furnishings, averaging $5,000 in value, was charged in the complaint upon 19 separate counts and was fined $304.00, or $16 for each day. The city had a population of about 700 people and was therefore, under the statutes of Kansas, a city of the third class. The cities of this class are empowered by the General Statutes of 1901, Sec. 1127, to license various trades and occupations. Such license tax, however, must be just and reasonable. Gen. St. 1901, Sec. 1128. Evidence was introduced in the lower court tending to prove that the annual revenue of the city for the two preceding years had not exceeded $1,000 per annum, and that this amount had been sufficient to pay the expenses of the municipality. There was also evidence that the annual sales of the resident merchants ranged from $7,000 to $16,000, and the net profits from such sales did not exceed $1,250 a year. The defendant contended that the tax was, under the circumstances, unjust and unreasonable. The majority opinion held that, under previous decisions of the court, such license could be used for the purpose of raising revenue; that, being a tax, "it knows no limit other than the neces-